

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over of Maekawa (US 6,170,491) in view of Gold (US Pub 2004/0237987).

Regarding claim 1, Maekawa discloses a double stick adhesive tape for a wig which as a net member (3) as a portion of the wig base (2) comprising two adhesive surface layers (21a,21b) wherein the first adhesive surface layer has a thickness more than half of a diameter of the net member to stick to the net member (see Figure 1b; column 2, lines 64-68). Since applicant has not specified the parameters of the diameter of the net member, one having ordinary skill in the art at the time the invention was made would have been able to modify Maekawa so that the first adhesive has a thickness more than half of a diameter of the net member, to be deemed matters of design choice, well within the skill of the ordinary artisan, obtained through routine experimentation in determining optimum results. Maekawa discloses a second adhesive surface layer (21b) (see Figure 1b). Maekawa does not disclose the second adhesive layer having a thickness equal to or more than a diameter of hair wherein the first adhesive layer is thicker than the second surface layer, however, the parameters of the thickness of the adhesive layer is deemed matters of design choice, will within the skill of the ordinary

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artisan, obtained through routing experimentation in determining optimum results. If further would have been obvious to one having ordinary skill in the art to find the first adhesive layer to be thicker than the second adhesive layer to be deemed matters of design choice, will within the skill of the ordinary artisan, obtained through routine experimentation in determining optimum results. Further Maekawa does not disclose a side of the first adhesive layer having convexities and concavities.

Gold teaches an adhesive surface having convexities and concavities (see Figure 8b; paragraph 52). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a side of the first adhesive layer to the net member of Maekawa to be deglossed as taught by Gold in order to increase the transpiration of the adhesion.

Regarding claim 3, Maekawa does not disclose the thickness of the first adhesive surface layer having a thickness range between 50 and 200  $\mu\text{m}$  and the second adhesive surface layer side of the adhesive layer having a thickness range between 50 and 150  $\mu\text{m}$ . However, one having ordinary skill in the art would find the parameters of the thickness of the adhesive layers to be deemed matters of design choice, will within the skill of the ordinary artisan, obtained through routing experimentation in determining optimum results. Further it is well known in the art to make adhesive layers in the order of microns as evidence by Shin (US 2002/0056465 paragraph 38).

Regarding claim 7, in that the minute concavity and convexity are formed by pressing the adhesive layer with a press having minute saliences, spray-coating granular adhesive, a blasting process, and by a blast process using finely crashed dry

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ice, it is noted that the patentability of a product does not depend on its method of production, therefore, the combination of Maekawa and Gold meets the limitation since the final product consists of minute concavity and convexity. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

### ***Response to Arguments***

3. Applicant's arguments filed January 15, 2010 have been fully considered but they are not persuasive.
4. In response to applicant's argument that the combination of Maekawa and Gold can not be combined because the layer (2) of Maekawa is made from "resins such as plastics, for example polyethylene" and this would not be a transpiring material therefore would not allow the function of Gold to transpire. However, polyethylene is a transpiring material see Patent H2042H Dobrin et al. that teach a breathable polyethylene material, therefore, the motivation provided by Gold would allow the device to be transpiring.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL R. STEITZ whose telephone number is (571)272-1917. The examiner can normally be reached on Monday-Friday 9:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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